Poosai Pandian Gunasekaran & Ors v AJN Energy (M) Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO C-04(A)-82–03 OF 2021
LEE SWEE SENG, MARIANA YAHYA AND LIM CHONG FONG JJCA
8 FEBRUARY 2023

Labour Law — Employment — Director General of Labour — Director General's power to inquire into complaints — Appellants lodged complaints to Labour Department for non-payment of full wages by respondent — Several appellants wanted to withdraw complaints — Director General of Labour proceeded to inquire on complaints — Whether s 69 of the Employment Act 1955 conferred full discretion to Director General of Labour to further investigate and decide on complaint despite withdrawal of complaints by complainants — Employment Act 1955 ss 69, 79, 91 & 99A

The appellants were Indian nationals employed by the respondent to carry out work in relation to high electrical voltage towers in Bentong, Pahang Darul Makmur. Due to the failure of the respondent to pay the appellants' full wages for the months of September and October 2018, the appellants had lodged complaints to the Department of Labour at Bentong. There was settlement discussion between the parties prior to the hearing of the complaints but the discussion ended with no settlement. Afterwards, during the hearing, there were several appellants wanted to withdraw their complaints because they wished to return to their home country expeditiously ('the statements'). Nevertheless, the presiding officer of the Labour Department (in exercising the powers of the Director General of Labour) decided to proceed to inquire on the complaints pursuant to s 69 of the Employment Act 1955 ('the EA'). At the conclusion of the hearing, the presiding officer ordered the respondent to pay the sum of RM95,617 to all 48 appellants being their unpaid wages for the months of September and October 2018 ('the decision'). The respondent had filed an appeal against the decision and the High Court had found in favour of the respondent, hence, the present appeal. In relation to this appeal, the court had granted leave of appeal in respect of the following questions: (a) whether s 69 of the EA conferred full discretion to the presiding officer to further investigate and decide on a complaint despite the statements by the complainant that they wanted to withdraw the complaint during the course of proceedings; and (b) whether the presiding officer was right in deciding that the respondent had a duty to pay wages to the appellants under the employment contract and the EA, regardless of statements made by the appellants that they wanted to withdraw the complaint.

Held, allowing the appeal with costs of RM15,000 to the appellants here and below subject to allocatur:

(1) Based on the evidence adduced, not each and every one of the appellants stated they wished to withdraw their respective complaint. More pertinently, the statements were equivocal in the sense that the appellants were concerned with prioritised returning to India soonest rather than being bogged down in the Labour Court inquiry. There was however no unmistakable and unequivocal expression by them of waiving or foregoing their unpaid wages by the respondent. In this regard, the judges in the present appeal reminded themselves that the EA was a social legislation and must therefore be interpreted liberally and equitably in favour of the weaker party who were the poor and likely illiterate appellants in this case (see paras 25–27).

(2) The Director General of Labour's exercise of discretion to inquire into a dispute on matters such as the non-payment of wages need not be premised on a complaint being made but rather on whether the dispute on wages has been resolved by way of a settlement or payment and hence, even if there had been a withdrawal of the complaint, the Director General of Labour may still proceed with his inquiry and made the necessary order (see para 28).

(3) Based on the above findings, the presiding officer had the jurisdiction and power to continue to conduct the inquiry into the complaints until the issuance of the decision as done. These jurisdiction and power were only forfeited if there was a negotiated settlement or prior payment of the unpaid wages. But there wasn't any as a matter of fact. In any event, even if a civil claim for unpaid wages may have been resolved or withdrawn, the Director General of Labour still had the discretion to inquire for the purposes of imposition of penalty as provided in ss 79, 91 and 99A of the EA if the circumstances so justified. Based on the above findings, the learned High Court judge had erred by having misdirected himself, thus, warranting appellate intervention. The court therefore answered both questions in the affirmative (see paras 29–31).

[Bahasa Malaysia summary

Perayu-perayu adalah warganegara India yang diambil bekerja oleh responden untuk menjalankan kerja-kerja berkaitan menara elektrik voltan tinggi di Bentong, Pahang Darul Makmur. Disebabkan kegagalan responden membayar gaji penuh perayu-perayu bagi bulan September dan Oktober 2018, perayu-perayu telah membuat aduan kepada Jabatan Tenaga Kerja di Bentong. Terdapat perbincangan penyelesaian antara pihak-pihak sebelum pendengaran aduan tetapi perbincangan tersebut tidak membuahkan hasil. Setelah itu, semasa perbicaraan, terdapat beberapa perayu ingin menarik balik aduan mereka kerana mereka ingin pulang ke negara asal dengan cepat

('kenyataan tersebut'). Namun begitu, pegawai yang diberi kuasa oleh Jabatan Tenaga Kerja (dalam menjalankan kuasa Ketua Pengarah Jabatan Tenaga Kerja) memutuskan untuk meneruskan untuk menyiasat aduan tersebut menurut s 69 Akta Kerja 1955 ('AK'). Pada akhir perbicaraan, pegawai yang diberi kuasa tersebut mengarahkan responden membayar sejumlah RM95,617 kepada kesemua 48 perayu sebagai gaji mereka yang belum dibayar untuk bulan September dan Oktober 2018 ('keputusan tersebut'). Responden telah memfailkan rayuan terhadap keputusan tersebut dan Mahkamah Tinggi telah membuat keputusan yang memihak kepada responden, justeru, rayuan semasa. Berhubung dengan rayuan ini, mahkamah telah memberikan kebenaran rayuan berkenaan dengan soalan-soalan berikut: (a) sama ada s 69 AK memberikan budi bicara penuh kepada pegawai yang diberi kuasa tersebut untuk menyiasat dan memutuskan aduan dengan lebih lanjut walaupun terdapat kenyataan oleh pengadu-pengadu bahawa mereka mahu menarik balik aduan semasa perbicaraan; dan (b) sama ada pegawai yang diberi kuasa adalah betul dalam memutuskan bahawa responden mempunyai kewajipan untuk membayar gaji kepada perayu-perayu di bawah kontrak pekerjaan dan AK, tanpa mengira kenyataan yang dibuat oleh perayu-perayu bahawa mereka ingin menarik balik aduan tersebut.

Diputuskan, membenarkan rayuan dengan kos sebanyak RM15,000 kepada perayu-perayu di sini dan di bawah tertakluk kepada alokatur:

(1) Berdasarkan keterangan yang dikemukakan, bukan setiap perayu menyatakan mereka ingin menarik balik aduan masing-masing. Lebih penting lagi, kenyataan tersebut samar-samar dalam erti kata bahawa perayu bimbang dengan keutamaan pulang ke India secepat mungkin daripada terperangkap dalam siasatan Mahkamah Buruh. Walau bagaimanapun, tiada ungkapan yang jelas dan tegas oleh mereka untuk mengetepikan atau melepaskan gaji mereka yang belum dibayar oleh responden. Dalam hal ini, hakim-hakim dalam rayuan ini mengingatkan diri mereka sendiri bahawa AK adalah perundangan sosial dan oleh itu mesti ditafsirkan secara liberal dan saksama memihak kepada pihak yang lebih lemah iaitu perayu-perayu yang miskin dan berkemungkinan buta huruf dalam kes ini (lihat perenggan 25–27).

(2) Budi bicara Ketua Pengarah Jabatan Tenaga Kerja untuk menyiasat pertikaian mengenai perkara seperti kegagalan membayar gaji tidak perlu berdasarkan aduan yang dibuat tetapi lebih kepada sama ada pertikaian mengenai gaji telah diselesaikan melalui penyelesaian atau pembayaran dan oleh itu, walaupun terdapat penarikan balik aduan, Ketua Pengarah Jabatan Tenaga Kerja masih boleh meneruskan siasatannya dan membuat perintah yang diperlukan (lihat perenggan 28).

(3) Berdasarkan dapatan-dapatan di atas, pegawai yang diberi kuasa tersebut mempunyai bidang kuasa dan kuasa untuk terus menjalankan siasatan

terhadap aduan sehingga keputusan dikeluarkan. Bidang kuasa dan kuasa ini hanya dilucutkan sekiranya terdapat penyelesaian yang dirundingkan atau pembayaran gaji yang belum dibayar terlebih dahulu. Tetapi berdasarkan fakta, kedua-dua perkara tersebut tiada. Walau apa pun, walaupun tuntutan sivil untuk gaji yang tidak dibayar mungkin telah diselesaikan atau ditarik balik, Ketua Pengarah Jabatan Tenaga Kerja masih mempunyai budi bicara untuk menyiasat bagi tujuan pengenaan penalti seperti yang diperuntukkan dalam ss 79, 91 dan 99A AK jika keadaan mewajarkannya. Berdasarkan dapatan-dapatan di atas, hakim Mahkamah Tinggi yang bijaksana telah terkhilaf dengan tersalah arah dirinya sendiri, justeru, memerlukan campur tangan rayuan. Oleh itu mahkamah menjawab kedua-dua soalan secara afirmatif (lihat perenggan 29–31).]

Cases referred to

Barat Estates Sdn Bhd & Anor v Parawakan a/l Subramaniam & Ors [2000] 4 MLJ 107; [2000] 3 CLJ 625, CA (refd)

Inter Tribal Health Authority v Sinclair [2016] FCJ No 797; 2016 FC 614, FC (refd)

Neoh Choo Ee & Co Sdn Bhd v Vasalamany Govindasamy & Anor [2004] 3 CLJ 321, CA (refd)

PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and other appeals [2021] 2 MLJ 60; [2021] 2 CLJ 441, FC (refd)

Syed Ibrahim bin Syed Mohd & Ors v Esso Production Malaysia Incorporated [2004] 2 MLJ 49; [2004] 1 CLJ 889, CA (refd)

Uvarajah & Anor v Penolong Pengarah Buruh, Butterworth & Ors [1992] 2 MLJ 152; [1992] 1 CLJ Rep 348, SC (refd)

Legislation referred to

Employment Act 1955 ss 69, 69A, 70, 79, 91, 99A
Industrial Relations Act 1967

Appeal from: Civil Appeal No CB-16–2–02 of 2019 (High Court, Temerloh)

M Ramachelvam (with Amirul Radzi bin Azlan) (Rama-Rozi & Assoc) for the appellants.
Nagarajan a/l Loganathan (Gulam & Wong) for the respondent.

Lim Chong Fong JCA:

INTRODUCTION

[1] This is an appeal against the High Court's order dated 6 November 2019 that set aside the Director General of Labour's order dated 25 January 2019 against the respondent to pay the unpaid wages of the appellants.

[2] At the conclusion of the appeal on 11 January 2023, the appeal was unanimously allowed by us. We set aside the High Court's order dated 6 November 2019 and affirmed the Director General of Labour's order dated 25 January 2019. We also put the appellant's solicitors to an undertaking to make payment to the appellants concerned after receipt of the payment from the respondent.

BRIEF BACKGROUND

[3] The appellants totalling 48 of them are Indian nationals formerly employed by the respondent pursuant to a contract of employment dated 26 January 2018 to undertake work in relation to high electrical voltage towers in Bentong, Pahang Darul Makmur.

[4] During the course of their employment, the respondent failed to provide the proper and appropriate accommodation and medical facilities as well as personal protection equipment in the workplace.

[5] Moreover, the respondent failed to pay the appellants' full wages for the months of September and October 2018.

[6] Consequently, the appellants fled the workplace and sought shelter at a temple in Batu Caves. Subsequently, they were rescued by the authorities and lodged their complaint to the Department of Labour at Bentong, Pahang Darul Makmur, claiming for unpaid wages for the months of September and October 2018 ('complaints').

[7] As a result of the complaints, Tuan Aznan bin Salleh, the Deputy Director General of Department of Labour at Bentong, Pahang Darul Makmur (in exercising the powers of the Director General of Labour) ('presiding officer') issued a summons against the respondent on 28 November 2018.

[8] The initial hearing of the complaints at the Labour Court was fixed on 6 December 2018 but was adjourned at the request of the respondent to have settlement discussion with the appellants.

[9] The settlement discussion was not fruitful and the hearing of the complaints resumed on 19 December 2018, 9 January 2019, and 10 January 2019 wherein the appellants were unrepresented whilst the respondent was represented by solicitors, Messrs N Selvam Jay & Co.

[10] During the hearing, there were several appellants who stated that they

wished to return to their home country expeditiously and accordingly forego their respective complaint.

[11] At the conclusion of the hearing, the presiding officer decided to proceed to inquire on the complaints pursuant to s 69 of the Employment Act 1955 (Revised-1981) (Act 265) ('the EA').

[12] After the inquiry was duly carried out, the presiding officer ordered the respondent to pay the sum of RM95,617 to all 48 appellants being their unpaid wages for the months of September and October 2018 ('decision').

[13] The respondent is dissatisfied with the decision and appealed to the High Court of Temerloh, Pahang Darul Makmur.

IN THE HIGH COURT

[14] The learned judge on 6 November 2019 allowed the appeal and ordered the parties to bear their own costs.

[15] The appellants thereafter sought the leave of this court to appeal and the leave was obtained on 25 February 2021 in respect of the following questions:

(i) Whether Section 69 of the EA confers full discretion to the Presiding Officer of the Labour Department and/or Labour Court to further investigate and decide on a complaint despite the statements by the Complainant (sic) that they wanted to withdraw the complaint during the course of proceedings; and

(ii) Whether the Presiding Officer of the Labour Department and/or Labour Court is right in deciding the respondent has a duty to pay wages to the Applicants (sic) under the Employment Contract and EA, regardless of statements made by the Applicants (sic) that they wanted to withdraw the complaint.

FINDINGS OF THIS COURT

[16] First and foremost, ss 69, 69A and 70 of the EA provide as follows:

Section 69 Director General's power to inquire into complaints.

(1) The Director General may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under —

(a) any term of the contract of service between such employee and his employer;

A (b) any of the provisions of this Act or any subsidiary legislation made thereunder; or

(c) the provisions of the Wages Councils Act 1947 [Act 195] or any order made thereunder, and, in pursuance of such decision, may make an order in the prescribed form for the payment by the employer of such sum of money as he deems just without limitation of the amount thereof.

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(2) The powers of the Director General under subsection (1) shall include the power to hear and decide, in accordance with the procedure laid down in this Part, any claim by —

C (i) an employee against any person liable under section 33;

(ii) a contractor for labour against a principal contractor or sub-contractor for any sum which the contractor for labour claims to be due to him in respect of any labour provided by him under his contract with the contractor or sub-contractor; or

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(iii) an employer against his employee in respect of indemnity due to such employer under subsection 13(1), and to make such consequential orders as may be necessary to give effect to his decision.

E (3) In addition to the powers conferred by subsections (1) and (2), the Director General may inquire into and confirm or set aside any decision made by an employer under subsection 14(1) and the Director General may make such consequential orders as may be necessary to give effect to his decision:

F Provided that if the decision of the employer under paragraph 14(1)(a) is set aside, the consequential order of the Director General against such employer shall be confined to payment of indemnity in lieu of notice and other payments that the employee is entitled to as if no misconduct was committed by the employee:

Provided further that the Director General shall not set aside any decision made by an employer under paragraph 14(1)(c) if such decision has not resulted in any loss

G in wages or other payments payable to the employee under his contract of service:

And provided further that the Director General shall not exercise the power conferred by this subsection unless the employee has made a complaint to him under the provisions of this Part within sixty days from the date on which the decision under section 14 is communicated to him either orally or in writing by his

H employer.

(3A) An order made by the Director General for the payment of money under this section shall carry interest at the rate of eight per centum per annum, or at such other rate not exceeding eight per centum per annum as the Director General may direct, the interest to be calculated commencing on the thirty-first day from the date

I of the making of the order until the day the order is satisfied:

Provided that the Director General, on an application by an employer made within thirty days from the date of the making of the order, if he is satisfied that special circumstances exist, may determine any other date from which the interest is to be calculated.

(4) Any person who fails to comply with any decision or order of the Director General made under this section commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand ringgit; and shall also, in the case of a continuing offence, be liable to a daily fine not exceeding one thousand ringgit for each day the offence continues after conviction.

69A. Limitation on power conferred by section 69

Notwithstanding section 69, the Director General shall not inquire into, hear, decide or make any order in respect of any claim, dispute or purported dispute which, in accordance with the Industrial Relations Act 1967—

(a) is pending in any inquiry or proceedings under that Act;

(b) has been decided upon by the Minister under subsection 20(3) of that Act; or

(c) has been referred to, or is pending in any proceedings before, the Industrial Court.

70 Procedure in Director General's inquiry

The procedure for disposing of questions arising under sections 69 and 69F shall be as follows:

(a) the person complaining shall present to the Director General a written statement of his complaint and of the remedy which he seeks or he shall in person make a statement to the Director General of his complaint and of the remedy which he seeks;

(b) the Director General shall as soon as practicable thereafter examine the complainant on oath or affirmation and shall record the substance of the complainant's statement in his case book;

(c) the Director General may make such inquiry as he deems necessary to satisfy himself that the complaint discloses matters which in his opinion ought to be inquired into and may summon in the prescribed form the person complained against, or if it appears to him without any inquiry that the complaint discloses matters which ought to be inquired into he may forthwith summon the person complained against:

Provided that if the person complained against attends in person before the Director General it shall not be necessary to serve a summons upon him;

(d) when issuing a summons to a person complained against the Director General shall give such person notice of the nature of the complaint made against him and the name of the complainant and shall inform him of the date, time and place at which he is required to attend and shall inform him that he may bring with him any witnesses he may wish to call on his behalf and that he may apply to the Director General for summonses to such persons to appear as witnesses on his behalf;

(e) when the Director General issues a summons to a person complained against he shall inform the complainant of the date, time and place mentioned therein and shall instruct the complainant to bring with him any witnesses he may wish to call on his behalf and may, on the request of the complainant and subject to any conditions as he may deem fit to impose, issue summonses to such witnesses to appear on behalf of the complainant;

(f) when at any time before or during an inquiry the Director General has reason to believe that there are any persons whose financial interests are likely to be affected by such decision as he may give on completion of the inquiry or who he has reason to believe have knowledge of the matters in issue or can give any evidence relevant thereto he may summon any or all of such persons;

(g) the Director General shall, at the time and place appointed, examine on oath or affirmation those persons summoned or otherwise present whose evidence he deems material to the matters in issue and shall then give his decision on the matters in issue;

(h) if the person complained against or any person whose financial interests the Director General has reason to believe are likely to be affected and who has been duly summoned to attend at the time and place appointed in the summons shall fail so to attend the Director General may hear and decide the complaint in the absence of such person notwithstanding that the interests of such person may be prejudicially affected by his decision;

(i) in order to enable a court to enforce the decision of the Director General, the Director General shall embody his decision in an order in such form as may be prescribed.

[17] In *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and other appeals* [2021] 2 MLJ 60; [2021] 2 CLJ 441 (FC), Tun Tengku Maimun bt Tuan Mat CJ held as follows on social legislation:

> [31] All legislation is social in nature as they are made by a publicly elected body. That said, not all legislation is 'social legislation'. A social legislation is a legal term for a specific set of laws passed by the Legislature for the purpose of regulating the relationship between a weaker class of persons and a stronger class of persons. Given that one side always has the upper hand against the other due to the inequality of bargaining power, the State is compelled to intervene to balance the scales of justice by providing certain statutory safeguards for that weaker class. A clear and analogous example is how this court interpreted the Industrial Relations Act 1967 in *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor* [1995] 3 MLJ 369; [1996] 4 CLJ 687 ('Hoh Kiang Ngan').

[18] Analogous to the Industrial Relations Act 1967, the EA is also a social legislation as held by this court in *Barat Estates Sdn Bhd & Anor v Parawakan a/l Subramaniam & Ors* [2000] 4 MLJ 107; [2000] 3 CLJ 625 (CA) where Gopal Sri Ram JCA (later FCJ) held as follows:

> The scheme of the Act thus when viewed as a whole, is to afford protection to persons employed under a contract of service. Hence the Act is designed to afford a degree of security of tenure that is not available to a servant at common law. It is therefore plain that the Act is a piece of beneficent social legislation. As such, its provisions must, in accordance with well-settled principles, receive a broad and liberal interpretation that enhances its avowed object. It is what Lord Simon in *Stock v Frank Jones (Tipton) Ltd* [1978] 1 WLR 231, 236 referred to as the 'functional construction of a statute.

See also *Syed Ibrahim bin Syed Mohd & Ors v Esso Production Malaysia Incorporated* [2004] 2 MLJ 49; [2004] 1 CLJ 889 (CA) and *Neoh Choo Ee & Co Sdn Bhd v Vasalamany Govindasamy & Anor* [2004] 3 CLJ 321 (CA).

[19] The appellants contended that pursuant to ss 69 and 70 of the EA, the presiding officer has wide discretionary powers to inquire and examine persons summoned on matters he deems material to the matters in issue and thereafter make his decision accordingly. By reason that the EA is a social legislation, the aforesaid statutory provisions must hence receive a liberal interpretation unless so expressly excluded as provided in s 69A of the EA and interpreted in *Uvarajah & Anor v Penolong Pengarah Buruh, Butterworth & Ors* [1992] 2 MLJ 152; [1992] 1 CLJ Rep 348 (SC).

[20] On the facts and circumstances here, the appellants contended that the presiding officer correctly within his jurisdiction and powers conferred by the EA carried on with the inquiry and ultimately made his decision notwithstanding the following testamentary statements made by several of the appellants that are specifically pointed out by the respondent:

(a) 'Saya mahu balik sahaja. Secepat mungkin. Tidak dipengaruhi oleh siapa-siapa untuk tinggalkan tempat kerja. Saya tinggalkan tempat kerja' as per Maridurai Sundaraj, the third complainant at the Labour Court;

(b) 'Saya tak buat kes. Orang yang suruh saya tandatangan. Saya tidak ingin buat kes terhadap majikan saya. Saya tidak dipengaruhi oleh orang lain. Saya mahu balik kampung sahaja. Masa saya tandatangan hanya borang kosong. Tiada apa-apa diisi dalam borang itu ...' as per Ayyadurai Thirumalaisamy, the fourth complainant at the Labour Court;

(c) 'Tandatangan sahaja. Tak tahu buat kes atau tidak. Dia orang kata bila sign boleh balik kampung ... Saya tiada niat untuk fail kes kepada majikan. Niat nak balik kampung saja ...' as per Abu Pakkar Siddiq Abdul Rasak, the fifth complainant at the Labour Court;

(d) 'Saya tak minta gaji dari majikan. Sign borang kosong. Saya tak tahu. Saya tak berminat untuk teruskan kes. Saya nak balik kampong (sic) sahaja' as per Sankar Dora Pandy, the tenth complainant at the Labour Court;

(e) 'Masa saya sign, boring (sic) kosong. Tak ada sesiapa janji bila sign boring (sic) boleh balik India. Saya tidak tahu untuk apa saya sign. Saya tidak mahu teruskan tuntutan saya.' as per Murugaiah Chidamparam, the 15th complainant at the Labour Court; and

(f) 'Saya tidak ada buat tuntutan gaji. Itu tandatangan saya. Saya tidak tahu. Ada orang janji, kalau sign boring (sic), saya boleh balik India. Dari Pejabat Buruh. Masa saya tandatangan, Borang kosong. Saya tidak mahu teruskan tuntutan saya. Saya nak balik India' as per Mariselvam Kottaisamy, the 17th complainant at the Labour Court.

[21] The respondent however counter-contended that the presiding officer wrongly carried on with the inquiry because the appellants already withdrew their voluntary complaints that were instituted as well as abandoned their relief sought during the hearing of the complaints. In consequence, the presiding officer no longer has the jurisdiction to continue to inquire and make his decision based on the Canadian case of *Inter Tribal Health Authority v Sinclair* [2016] FCJ No 797; 2016 FC 614.

[22] We have accordingly in the exercise of our appellate function reviewed the decision and the judgment of the learned High Court judge.

[23] In this respect, the presiding officer held as follows:

> Walaupun pengadu telah memberi keterangan untuk menarik balik kes dan tidak mahu meneruskan tuntutan terhadap majikan, ini tidak bermakna majikan tidak perlu membayar gaji kepada pekerja dan adalah menjadi tanggungjawab defendan selaku majikan kepada pengadu (pekerja) untuk membayar gaji penuh kepada pengadu sebagaimana yang telah dipersetujui di bawah Employment Contract dan di bawah peruntukan Akta Kerja 1955 di bawah seksyen 19(1).

[24] However, the learned High Court judge held as follows:

> [6] ... Alasannya ialah oleh kerana pengadu-pengadu telah bersetuju untuk menarik balik aduan mereka terhadap pihak Defendan maka ia bermakna tidak ada lagi kausa tindakan oleh pengadu-pengadu wujud terhadap pihak Responden (sic). Mahkamah tidak berhak untuk membenarkan apa-apa perintah/relif yang tidak dituntut oleh pengadu-pengadu.

[25] Firstly, we know that there are 48 appellants, but we noted from the evidence adduced that not each and every one of them stated they wish to withdraw their respective complaint.

[26] Secondly and more pertinently, we have carefully reviewed those statements made by the appellants as highlighted by the respondent. We find that the statements are equivocal in the sense that the appellants were

concerned with prioritised returning to India soonest rather than being bogged down in the Labour Court inquiry. There is however no unmistakable and unequivocal expression by them of waiving or foregoing their unpaid wages by the respondent.

[27] Thirdly, we reminded ourselves that the EA is a social legislation and must therefore be interpreted liberally and equitably in favour of the weaker party who are the poor and likely illiterate appellants here.

[28] We are of the considered view that the Director General of Labour's exercise of discretion to inquire into a dispute on matters such as the non-payment of wages need not be premised on a complaint being made but rather on whether the dispute on wages have been resolved by way of a settlement or payment and hence, even if there had been a withdrawal of the complaint, the Director General of Labour may still proceed with his inquiry and made the necessary order.

[29] In the premises, we find and hold that the presiding officer had the jurisdiction and power to continue to conduct the inquiry into the complaints until the issuance of the decision as done. In our view, the aforesaid jurisdiction and power are only forfeited vis a vis the appellants if there is a negotiated settlement or prior payment of the unpaid wages. But there wasn't any as a matter of fact. In any event, even if a civil claim for unpaid wages may have been resolved or withdrawn, the Director General of Labour, in our further view, still has the discretion inquire for purposes of imposition of penalty as provided in ss 79, 91 and 99A of the EA if the circumstances so justify.

[30] Consequently, we find that the learned High Court judge has erred by having misdirected himself; thus, warranting appellate intervention.

[31] For completeness, we answer the first question posed in the affirmative subject to the caveat as alluded to in para [29] above and the second question posed in the affirmative.

CONCLUSION

[32] It is for the foregoing reasons that we allowed the appeal as so ordered with costs of RM15,000 to the appellants here and below subject to allocatur.

A *Appeal allowed with costs of RM15,000 to appellants here and below subject to allocatur.*

Reported by Dzulqarnain Ab Fatar

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